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Testimony of John H. Lawrence, Jr.
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Opposing
HB 5490, An Act Concerning the Establishment of Benefit Corporations
Judiciary Committee
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Senator Coleman, Representative Fox and other members of the Judiciary Committee, thank you for the opportunity to appear before the Committee to comment on Raised Bill 5490, An Act Concerning the Establishment of Benefit Corporations.

My name is John H. Lawrence, Jr. I am a partner at Shipman & Goodwin in Hartford practicing in the areas of business and corporate law. I am the Vice Chair and legislative liaison of the Business Law Section of the Connecticut Bar Association (CBA). The Business Law Section includes over 600 Connecticut attorneys interested in business and corporate law issues.

The CBA Business Law Section **opposes** Raised Bill 5490.

I want to make it clear at the outset that we support the concept that businesses can and should be used to create social benefits and improve society and that directors and officers of business organizations should be authorized in the proper circumstances to consider many factors, other than pure profit, in making business decisions. Newman's Own, Ben & Jerry's and Patagonia have all embraced this concept. Section 33-756(d) of the Connecticut Business Corporation Act (CBCA) already authorizes directors of a publicly-traded Connecticut corporation to consider the interests of the corporation's employees, customers, creditors and suppliers, as well as other community and societal considerations, when they are evaluating a merger or other business combination. Under Section 33-756(d), a director may also consider other factors he reasonably considers appropriate when evaluating a merger or other business combination.

We oppose Raised Bill No. 5490 because we believe that the duties of directors and officers of a benefit corporation, specifically the factors in Section 8 that must be considered by directors in taking any corporate action, are unworkable as a practical matter and create a significant risk of expensive and time-consuming litigation. Moreover, we believe that the "benefit enforcement proceeding" authorized by Section 10(b) to enforce the vague duties of directors and officers would have a significant chilling effect on the use of benefit corporations and the willingness of individuals to serve as directors and officers of such corporations. An example of the breadth of the benefit enforcement proceeding is that it may even be brought by a director who has no financial interest in the corporation. In our view, a derivative action authorized by Section 33-720 of the Business Corporation Act and other existing remedies are more than adequate to provide shareholders of a benefit corporation with protection against directors or officers who fail to perform their duties.

Another area of our concern with this Bill is that a regular business corporation could be converted to a benefit corporation by a vote of two-thirds of the shareholders without any form of protection, such as appraisal rights, for the minority shareholders who oppose such a change.

Our most important objections to the Bill, however, are based on the fact that it adopts a "one-size-fits-all" approach that does not allow for variations from one organization to another. For example, every benefit corporation is required to prepare an annual benefit report that meets the criteria of Section 11 of the Bill and deliver a copy of that report to the office of the Secretary of State. We believe that this provision should be optional, at least for benefit corporations with fewer than 100 shareholders, because it may be burdensome for small businesses and could be a significant deterrent to becoming a benefit corporation. The modern approach to business organization statutes is to provide business founders and owners with a broad framework for organizing a business to suit their individual needs and allow the maximum flexibility in structuring the business. We believe that this flexible approach should be followed for social enterprise businesses as well and that the primary purpose of social enterprise legislation should be to provide broad protection for directors and officers to pursue the social benefits approved by the owners. Moreover, the concept should not be limited to corporations but should also be available to limited liability companies. The current Bill does not authorize limited liability companies to become benefit enterprises, and we believe that this is a major defect. As many of you know, most businesses today are organized as limited liability companies. This Bill would force the use of the corporate form where the use of a limited liability company may be more appropriate. Like the other shortcomings mentioned above, this will limit the usefulness and acceptance of social enterprise businesses by members of the bar and by business founders and owners.

We are willing to work with the sponsors of this legislation to craft a bill for introduction in a future session that is both practical and appropriate and will answer the concerns of business lawyers so that they will be comfortable in recommending the use of a benefit organization in appropriate circumstances.

Unfortunately, we cannot support Raised Bill 5490 as it is currently drafted and we urge you not to report it out of committee.

Thank you for the opportunity to appear before the Committee. I appreciate your attention and would be pleased to answer any questions that you may have.